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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KEVIN CALLAHAN and DARYLE GIBBENS

Appeal 2007-2170
Application 09/778,311
Technology Center 3600

Decided: June 30, 2008

Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and
ANTON W. FETTING, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Kevin Callahan, et al. (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 1-19. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM.¹

THE INVENTION

The Appellants' claimed invention is to a method and system for scheduling an in-home appliance repair service via a computer network, such as the Internet (Specification 1:7-9; 3:12-14). It is characterized by the use of a "repair scheduling server execut[ing] a program which determines a plurality of available repair time slots and transmits a list of choices to the client device for display." (Specification 3:17-20.)

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A method of scheduling an in-home appliance repair service by a customer, the method comprising the steps of:

receiving an appliance selection request message at a server device from a client device via a wide area network, the appliance selection request message being indicative of a desire to receive appliance selection data, the appliance selection data facilitating selection of a first home appliance by the customer;

transmitting the appliance selection data from the server device to the client device via the wide area network in response to receiving the appliance selection request message;

receiving an appliance identifier at the

¹ Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed Apr. 7, 2006), the Examiner's Answer ("Answer," mailed Apr. 21, 2006); and the Reply Brief ("Reply Br.," filed May 30, 2006).

server device from the client device via the wide area network, the appliance identifier being provided by the customer and distinguishing the first home appliance from a second home appliance;

receiving a geographical identifier provided by the customer at the server device from the client device via the wide area network;

determining at the server device multiple available repair time slots based on at least one of the appliance identifier and geographical identifier provided by the customer;

transmitting data indicative of the multiple available repair time slots from the server device to the client device via the wide area network to thereby allow the customer to select at least one of the multiple available repair time slots; and

receiving time slot selection data at the server device from the client device via the wide area network, the time slot selection data indicating a desire by the customer to have the first home appliance repaired in the one of the multiple available repair time slots selected by the customer.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

- “KitchenAid Appliance Diagnostic System,” archive.org website of whirlpool.com (Jun. 26, 1997) [A].
- “KitchenAid Repair Service Locator,” archive.org website of whirlpool.com (Jun. 26, 1997) [B].

- Whirlpool website search engine, archive.org website of whirlpool.com (Jan. 17, 1999) [E].
- Whirlpool webpage of air conditioners hypertext links of specific models, archive.org website of whirlpool.com (Apr. 29, 1999) [F].
- Whirlpool webpage “Service Matters,” archive.org website of whirlpool.com (Jun. 26, 1997) [G];
- Hickey, Kathleen, *Right Place, Right Time*, 260 Traffic World 47 (Nov. 1999) [U1].
- PRNewswire, *PointServe Launches Breakthrough On-Line Scheduling Solutions to Dramatically Improve the Reliability of Home and Business-Oriented Service Delivery Regional Rollout to Begin in Salt Lake City on Nov 1; National Launch Slated for Early 2000* 1 (Oct 1999) (ProQuest ID 45806204) [V1].
- Satran, Dick, *Rocket Scientist tries improving service industry*, Vancouver Sun E2 (Oct 1999) (E2, ProQuest ID 08) [W1].
- Hall, John R., *New Service Website Holds Promise for Contractors*, Air Conditioning, Heating & Refrigeration News 1 (Nov 1999) [X1].
- Francett, Barbara, *An Exercise in Utility*, Software Magazine 75 (June 1997) [U2].

The following rejections are before us for review:

1. Claims 1-7 and 9-19 are rejected under 35 U.S.C. § 103(a) as unpatentable over References A, B, E, F, G, U1, V1, W1, and X1.
2. Claim 8 is rejected under 35 U.S.C. § 103(a) as unpatentable over References A, B, E, F, G, U1, V1, W1, X1, and U2.

ISSUES

The first issue before us is whether the Appellants have shown that the Examiner erred in rejecting claims 1-7 and 9-19 as unpatentable over References A, B, E, F, G, U1, V1, W1, and X1. This issue turns on whether the prior art would have led one having ordinary skill in the art to a method of scheduling an in-home appliance repair service by a customer comprising

a step of

determining at the server device multiple available repair time slots based on at least one of the appliance identifier and geographical identifier provided by the customer [and] transmitting data indicative of the multiple available repair time slots from the server device to the client device via the wide area network to thereby allow the customer to select at least one of the multiple available repair time slots . . .

(claim 1).

The second issue before us is whether Appellants have shown that the Examiner erred in rejecting claim 8 as unpatentable over References A, B, E, F, G, U1, V1, W1, X1, and U2. This issue turns on how the first issue is disposed.

FINDINGS OF FACT

We find that the following enumerated findings are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

The scope and content of the prior art

1. Reference A is a copy of a webpage from Whirlpool.com said to be linked to an interactive application for diagnosing a problem with an appliance.

2. Reference B is a copy of a form on a webpage from Whirlpool.com said to allow a customer to locate a service provider near a specified zip code.
3. Reference E is a copy of a form on a webpage from Whirlpool.com said to allow for searching key words.
4. Reference F is a copy of a webpage from Whirlpool.com listing various appliances.
5. Reference G is a copy of a webpage from Whirlpool.com said to have links to the “nearest” service providers.
6. Reference U1 is a copy of a document describing that “PointServe offers web-enabled logistics software that helps move people around.”
7. Reference V1 is a copy of a document describing that PointServe provides on-line solutions to improve home and business-oriented service delivery.
8. Reference W1 is a copy of a document describing that PointServe will launch a site to let customers arrange and schedule home services.
9. Reference X1 is a copy of an article about a service website.
10. Reference U2 is a copy of an article about how to deliver timely field service to customers needing repairs through linking field service professionals with centralized databases.

Any differences between the claimed subject matter and the prior art

11. The claimed invention combines in a single method steps separately disclosed in the prior art. The claimed invention also

employs a server to determine multiple available repair time slots based on at least one of the appliance identifier and geographical identifier provided by the customer and transmitting data indicative of the multiple available repair time slots to a customer to select an available repair time slot.

The level of skill in the art

12. Neither the Examiner nor Appellants has addressed the level of ordinary skill in the pertinent arts of scheduling an in-home appliance repair service by a customer via a computer network. We will therefore consider the cited prior art as representative of the level of ordinary skill in the art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (“[T]he absence of specific findings on the level of skill in the art does not give rise to reversible error ‘where the prior art itself reflects an appropriate level and a need for testimony is not shown’”) (quoting *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755 F.2d 158, 163 (Fed. Cir. 1985).

Secondary considerations

13. There is no evidence on record of secondary considerations of non-obviousness for our consideration.

PRINCIPLES OF LAW

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 127 S.Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”) The Court in *Graham* further noted that evidence of secondary considerations “might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” 383 U.S. at 17-18.

ANALYSIS

Rejection of claims 1-7 and 9-19 as unpatentable over References A, B, E, F, G, U1, V1, W1, and X1.

The Appellants argue claims 1-7 and 9-19 as a group (App. Br. 3-11). We select claim 1 (*see supra*) as the representative claim for this group, and the remaining claims 2-7 and 9-19 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii) (2007).

The Examiner found that References A, B, and G (“Whirlpool.com”) described all the limitation of claim 1 but the last three steps. (See Answer 6-8.) The Examiner found that the limitations of the last three steps of claim 1 were described in References U1, V1, and W1. (Answer 8-10.) The Examiner determined that

[i]t would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Whirlpool.com regarding providing appliance selection data over the internet via a drop down box for customers to select and provide appliance selection data from multiple selections of appliance selection data, with the step of determining, transmitting and receiving multiple time slot selection data to and from customers over the internet for scheduling an appliance repair, as taught by PointServe, because it will improve customer satisfaction with the home service industry.

(Answer 11.)

The Appellants argued that the claimed *combination* is not disclosed in the cited references. (App. Br. 6-7.) Specifically, the Appellants admit that references U1, V1, and W1 (the “PointServe” references) disclose “geographic information systems (GIS) routing capabilities” (App. Br. 7) but argue that they are not disclosed as being used to “transmit[] data indicative of the multiple available repair time slots from the server device to the client device via the wide area network to thereby allow the customer to select at least one of the multiple available repair time slots” (claim 1). (App. Br. 8.)

The Appellants also argued that, but for the use of hindsight, the PointServe references fail to show a step of

determining at the server device multiple available repair time slots based on at least one of the appliance identifier and geographical identifier provided by the customer [and] transmitting data indicative of the multiple available repair time slots from the server device to the client device via the wide area network to thereby allow the

customer to select at least one of the multiple
available repair time slots . . .

(claim 1). (App. Br. 9-11.) According to the Appellants, although the “‘PointServe’ system allows Internet users to tap in directly and get access to providers’ schedules, the ‘PointServe’ system nevertheless requires that a user schedule a repair by doing a search and for potential open spaces in a company’s ... schedule for service people.” (Reply Br. 2.) Thus, the Appellants argued that PointServe does not describe a method whereby a “server” determines for the user multiple available repair time slots in which to schedule a service provider.

We are not persuaded by the Appellants’ arguments.

Reference W1, for example, describes a site allowing a consumer to arrange and schedule service calls. The Appellants concede that the “PointServe” system, considered alone or in combination with “Whirlpool.com,” might function to identify plural, potential service providers that may be within a geographic region or that may be qualified to work on a specified appliance which provided service providers may (or may not) have available repair time slots *which the user can then further manually search for*, [but that] “PointServe” does not disclose, teach, or suggest the expressly claimed method in which a *server determines for the user* multiple available repair time slots”

(Reply Br. 3.) In other words, the Appellants agree that the claimed method would have been obvious over PointServe (Reference W1) were the claimed method to be drawn to a *manual* search for available time slots. In effect, the Appellants are arguing the unobviousness of using a server to accomplish what a manual search could do. However, it is generally obvious to

automate a known manual procedure. Our reviewing court stated in *Leapfrog Enterprises Inc. v. Fisher-Price Inc.*, 485 F.3d 1157 (Fed. Cir. 2007) that one of ordinary skill in the art would have found it obvious to combine an old electromechanical device with electronic circuitry

to update it using modern electronic components in order to gain the commonly understood benefits of such adaptation, such as decreased size, increased reliability, simplified operation, and reduced cost The combination is thus the adaptation of an old idea or invention . . . using newer technology that is commonly available and understood in the art.

Id at 1162.

Regarding the arguments that the claimed *combination* is not disclosed in the cited references, in the *KSR* test, the Supreme Court emphasized “the need for caution in granting a patent based on the combination of elements found in the prior art.” In that regard, but for the server, the Appellants have not challenged the Examiner’s contention that the claimed elements are shown on the cited references. The question is whether the claimed combination is more than the combination of the prior art elements and their known functions. In that regard, no unexpected results for the combination have been shown.

The rejection is sustained.

Rejection of claim 8 as unpatentable over References A, B, E, F, G, U1, V1, W1, X1, and U2.

The Appellants have not specifically addressed the merits of this rejection. It appears that the Appellants are relying on the arguments made

with respect to the rejection of claims 1-7 and 9-19. Since we do not find the Appellants' arguments persuasive as to error in the rejection of those claims, given nothing more in the way of argument, we do not find them persuasive as to error in the rejection of claim 8.

CONCLUSIONS OF LAW

We conclude the Appellants have failed to show that the Examiner erred in rejecting claims 1-7 and 9-19 under 35 U.S.C. § 103(a) as unpatentable over References A, B, E, F, G, U1, V1, W1, and X1, and claim 8 under 35 U.S.C. § 103(a) as unpatentable over References A, B, E, F, G, U1, V1, W1, X1, and U2.

DECISION

The decision of the Examiner to reject claims 1-19 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

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Application 09/778,311

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